

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

BRYAN D. PATTERSON,)	Case No.: 1:20-cv-00751-DAD-SAB (PC)
)	
Plaintiff,)	
)	ORDER VACATING JANUARY 5, 2020 ORDER,
v.)	GRANTING DEFENDANT'S MOTION FOR
)	EXTENSION OF TIME TO FILE AN ANSWER
MAURICE HOWARD, et al.,)	NUNC PRO TUNC, AND DIRECTING THE
)	CLERK OF COURT TO FILE DEFENDANT'S
Defendants.)	ANSWER ATTACHED TO DOCUMENT
)	NUMBER 20
)	
)	(ECF Nos. 19, 20)
)	

Plaintiff Bryan D. Patterson is proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

This action proceeds proceed on Plaintiff's First Amendment free exercise of religion claims against defendants Maurice Howard and John Doe.

On September 22, 2020, the Court found service of the complaint appropriate and directed service on Defendants Maurice Howard and John Doe under the Court's E-Service pilot program. (ECF No. 12.)

On October 16, 2020, CDCR filed a Notice of E-Service Waiver indicating that Defendant Maurice Howard intended to waive service. (ECF No. 14.)

The California Attorney General's Office timely filed a waiver of service of process on behalf of Defendant Maurice Howard on November 13, 2020. (ECF No. 18.)

1 However, Defendant Howard failed to file a responsive pleading on or before the December
2 15, 2020, deadline. Therefore, on January 5, 2021, the Court issued an order directing Plaintiff to
3 inform the Court whether entry of default should be entered against Defendant Maurice Howard.
4 (ECF No. 19.)

5 On January 7, 2021, Defendant Howard filed a “Motion to Set Aside Order Directing Plaintiff
6 to Inform Court Whether Default Should be Imposed as to Defendant Howard, Allow Nunc Pro Tunc
7 An EOT to File an Answer, and Deem Proposed Answer as Filed by Maurice Howard.” (ECF No.
8 20.)

9 Defendant submits that the time to respond was based on the date the waiver of service of
10 process was filed, “rather than the California Department of Corrections and Rehabilitation’s notice of
11 intent to waive service was filed four weeks beforehand” and missed the applicable deadline. (ECF
12 No. 20 at 3.)

13 Good cause having been presented based on Defendant’s representation of excusable neglect, a
14 lack of prejudice to Plaintiff and presentation of a potential meritorious defense, the Court will vacate
15 the January 5, 2021 order and grant nunc pro tunc Defendant’s request for an extension of time to file
16 an answer.

17 Accordingly, it is HEREBY ORDERED that:

- 18 1. Defendant’s request for an extension of time to file an answer is granted;
- 19 2. The Clerk of Court shall file the Exhibit attached to Defendant’s January 7, 2021 filing
20 (ECF No. 20) as Defendant Howard’s answer to Plaintiff’s complaint; and
- 21 3. The Court’s January 5, 2021 order (ECF No. 19) is VACATED.

22
23 IT IS SO ORDERED.

24 Dated: **January 8, 2021**


UNITED STATES MAGISTRATE JUDGE